

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of BARBARA BAILEY and DEPARTMENT OF DEFENSE,
DEFENSE ELECTRONICS SUPPLY CENTER, Dayton, OH

*Docket No. 98-432; Submitted on the Record;
Issued October 5, 1999*

DECISION and ORDER

Before GEORGE E. RIVERS, DAVID S. GERSON,
BRADLEY T. KNOTT

The issues are: (1) whether appellant has met her burden of proof in establishing that her knee condition was causally related to her September 29, 1992 employment injury; (2) whether the Office of Workers' Compensation Programs properly denied appellant's request for a hearing before an Office hearing representative; and (3) whether the Office properly denied appellant's request for reconsideration.

The case has been on appeal previously.¹ In a September 12, 1996 decision, the Board noted that appellant was injured on September 29, 1992 when she was pulling a dolly loaded with a file cabinet which dipped into a hole, causing the file cabinet to shift and causing appellant to twist and develop pain in her lower back and left knee. The Office accepted her claim for musculoligamentous sprain of the lumbosacral spine with an aggravation of preexisting arthritis and a sprain of the left knee. Dr. J.B. Paley, a Board-certified orthopedic surgeon, noted that appellant sustained an employment injury which the Office had accepted for osteoarthritis of the left knee and which led to a left medial meniscectomy on February 14, 1969. The Office subsequently denied appellant's claim for continuing compensation and her request for authorization for surgery on the left knee. The Board, in its decision, affirmed the Office's decision, finding that it had not been shown that appellant sustained an employment-related knee injury in 1969. The Board further indicated that Dr. Paley had not given a physiological explanation on how such an injury would have caused osteoarthritis of the knee and how the 1992 employment injury would have compounded the left knee condition to the extent that she needed knee surgery even after she returned to work.

In a February 28, 1997 letter, appellant, through her attorney, requested reconsideration. He submitted in support of his request a January 22, 1997 report from Dr. Paley who indicated that appellant sustained a torn medial meniscus of the left knee and, on February 14, 1969,

¹ Docket No. 94-2262 (issued September 12, 1996). The history of the case is contained in the prior decision and is incorporated by reference.

underwent an old-fashioned type of medial meniscectomy. He related that appellant had a progressive history of intermittent pain and swelling of the knee over time which became progressive. Dr. Paley stated that complete removal of a meniscus causes the loss of the cushioning effect and, as a result, causes the bony surfaces to come into contact with each other producing degenerative arthritis. He noted that open meniscectomies were no longer performed and if they were, only a portion of the meniscus was removed.

In an April 28, 1997 merit decision, the Office denied appellant's request for modification of the Board's and the Office's prior decisions. In an accompanying memorandum to the Director, an Office reconsideration claims examiner indicated while Dr. Paley had related appellant's left knee condition to the 1969 surgery, he had not discussed how appellant's knee condition was related to the September 29, 1992 employment injury.

In a May 1, 1997 letter, appellant's attorney requested a hearing before an Office hearing representative. In a May 28, 1997 decision, the Office found that appellant was not entitled to a hearing as a matter of right because she had previously requested reconsideration. The Office exercised its discretion to review appellant's request and denied the request on the grounds that the issue in the case can be equally well addressed by requesting reconsideration and submitting evidence not previously considered which would be sufficient to warrant modification of the prior decision.

In a September 10, 1997 letter, appellant's attorney again requested reconsideration. He submitted in support of the request an August 6, 1997 report from Dr. Paley who repeated the history of the 1969 surgery and September 29, 1992 employment injury and noted that appellant's left knee complaints had become worse. Dr. Paley reported that every time he examined appellant, her knee was warm, boggy, swollen and painful. He stated that appellant's condition was a result of the open medial meniscectomy performed in 1969, producing the degenerative arthritic change and aggravated by the 1992 employment injury. In an October 14, 1997 decision, the Office denied appellant's request for reconsideration on the grounds that she had not submitted new and relevant evidence nor raised substantive legal questions not previously considered. The Office therefore denied appellant's request for reconsideration.

The Board finds that appellant has not met her burden of proof in establishing that her left knee condition is causally related to the September 29, 1992 employment injury.

A person who claims benefits under the Federal Employees' Compensation Act² has the burden of establishing the essential elements of her claim. Appellant has the burden of establishing by reliable, probative and substantial evidence that her medical condition was causally related to a specific employment incident or to specific conditions of employment.³ As part of such burden of proof, rationalized medical opinion evidence showing causal relation must be submitted.⁴ The mere fact that a condition manifests itself or worsens during a period of

² 5 U.S.C. §§ 8101-8193.

³ *Margaret A. Donnelly*, 15 ECAB 40, 43 (1963).

⁴ *Daniel R. Hickman*, 34 ECAB 1220, 1223 (1983).

employment does not raise an inference of causal relationship between the condition and the employment.⁵ Such a relationship must be shown by rationalized medical evidence of causal relation based upon a specific and accurate history of employment incidents or conditions which are alleged to have caused or exacerbated a disability.⁶

In his January 22, 1997 report, Dr. Paley gave a rationalized explanation on how appellant's 1969 surgery caused degenerative arthritis of the left knee. However, he did not explain in specific detail how the September 29, 1992 employment injury aggravated this condition to the extent that appellant had continuing disability and required surgery to the left knee. Without such a rationalized explanation, Dr. Paley's report had diminished probative value on the issue of the causal relationship between the September 29, 1992 employment injury and appellant's left knee condition and was insufficient to meet appellant's burden of proof.

The Board also finds that the Office properly denied appellant's request for a hearing before an Office hearing representative.

Section 8124(b)(1) of the Federal Employees' Compensation Act⁷ dealing with a claimant's entitlement to a hearing before an Office hearing representative states that "[b]efore review under section 8128(a) of this title, a claimant for compensation not satisfied with a decision of the Secretary ... is entitled, on request within 30 days after the date of the issuance of the decision, to a hearing on [her] claim before a representative of the Secretary." The Board has noted that section 8124(b)(1) "is unequivocal in setting forth the limitation in requests for hearings...."⁸ Therefore, a claimant is not entitled to a hearing as a matter or right if he or she has requested reconsideration under section 8128(a) of the Act prior to requesting a hearing before an Office hearing representative.

The Office, in its broad discretionary authority in the administration of the Act, has the power to hold hearings in certain circumstances where no legal provision was made for such hearings, and the Office must exercise this discretionary authority in deciding whether to grant a hearing. Specifically, the Board has held that the Office has the discretion to grant or deny a hearing request on a claim involving an injury sustained prior to the enactment of the 1966 amendments to the Act which provided the right to a hearing, when the request is made after the 30-day period established for requesting a hearing, or when the request is for a second hearing on the same issue. The Office's procedures, which require the Office to exercise its discretion to grant or deny a hearing when a hearing request is untimely or made after reconsideration under section 8128(a), are a proper interpretation of the Act and Board precedent.⁹ In this case, the Office exercised its discretion by finding that appellant could have the issue considered equally well by submitting new, relevant evidence and requesting reconsideration. As the only

⁵ *Juanita Rogers*, 34 ECAB 544, 546 (1983).

⁶ *Edgar L. Colley*, 34 ECAB 1691, 1696 (1983).

⁷ 5 U.S.C. § 8124(b)(1).

⁸ *Ella M. Garner*, 36 ECAB 238 (1984); *Charles E. Varrick*, 33 ECAB 1746 (1982).

⁹ *Henry Moreno*, 39 ECAB 475 (1988).

limitation on the Office's authority is reasonableness, abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deductions from known facts.¹⁰ There is no evidence that the Office abused its discretion in this case.

The Board also finds that the Office properly denied appellant's request for reconsideration.

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of her claim by showing that the Office erroneously applied or interpreted a point of law, advancing a point of law or fact not previously considered by the Office, or submitting relevant and pertinent evidence not previously considered by the Office. Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.¹¹ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.¹² Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.¹³

In this case, Dr. Paley, in his August 6, 1997 report, again stated that appellant's left knee condition was caused by the 1969 surgery and was aggravated by his September 29, 1992 employment injury. While Dr. Paley has given a rationalized explanation on how the 1969 surgery caused the degenerative arthritis of the knee, he has failed to give a rationalized explanation on how the September 29, 1992 alleged injury aggravated the left knee condition to the extent that appellant had continuing disability and required additional surgery on the knee. Dr. Paley's report therefore only repeated what he had stated previously and did not provide any new, relevant medical evidence in support of appellant's claim. His August 6, 1997 report therefore was insufficient to require a merit review of appellant's claim.

¹⁰ *Daniel J. Perea*, 42 ECAB 214 (1990).

¹¹ 20 C.F.R. 10.138(b)(2).

¹² *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

¹³ *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

The decisions of the Office of Workers' Compensation Programs dated October 14, May 28 and April 28, 1997 are hereby affirmed.

Dated, Washington, D.C.
October 5, 1999

George E. Rivers
Member

David S. Gerson
Member

Bradley T. Knott
Alternate Member